

SERIAL **03097** - IGA DRY CELL BATTERIES,

City of Chandler - WH3-6135-1949

CONTRACT PERIOD **BEGINNING APRIL 14, 2003**
ENDING NOVEMBER 30, 2005

TO: **All Departments**

FROM: Department of Materials Management

SUBJECT: Contract for **DRY CELL BATTERIES,**
City of Chandler Contract WH3-6135-1949

Attached to this letter is a listing of vendors available to Maricopa County Agencies utilizing the City of Chandler Contract **WH3-6135-1949**. The using agency and other interested parties may access and electronic version of this contract from the Materials Management Web site at:

http://www.maricopa.gov/materials/Awarded_Contracts/search.asp.

Please note: Price Agreement Purchase Orders (PG documents) may be generated using the information from this list. Use Commodity Code(s) Commodity Code C613501 / Blanket No. B0700058.

All purchases of product(s) listed on the attached pages of this letter are to be obtained from the listed contractor(s).



CITY OF CHANDLER
CHANDLER, ARIZONA

CONTRACT DRY CELL BATTERIES WH3-6135-1949

NAME OF FIRM	<u>Sunbelt Battery LLC</u>
ADDRESS OF FIRM	<u>602 N. Hayden Road</u> <u>Scottsdale, AZ 85257-4701</u>
CONTACT NAME AND TITLE	<u>F. W. James, VP</u>
TELEPHONE NUMBER	<u>480-968-8068</u>
FAX NUMBER	<u>480-968-9838</u>
CITY COUNCIL APPROVAL:	<u>November 7, 2002</u>
Term of Contract:	<u>December 1, 2002 through November 30, 2005</u>
Payment Terms:	<u>5% 21 NET 30</u>
CONTRACT OFFICER:	<u>Tom North</u> Phone: 480-782-2407 e-mail: Fax: 480-782-2410 thomas.north@ci.chandler.az.us

**CITY OF CHANDLER
STANDARD TERMS AND CONDITIONS**

The following terms and conditions are an explicit part of the solicitation and any resultant contract. Any exceptions thereto must be specific and in writing.

1. CERTIFICATION. By signature in the Offer section of the solicitation, the Vendor certifies that:
 - A. The Vendor has not paid nor agreed to pay any person, other than a bona fide employee, a fee or a brokerage resulting from the award of any contract resultant from this solicitation.
 - B. The prices in this solicitation have been arrived at independently without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices, with any other Vendor, or potential Vendor.
 - C. The Vendor shall not discriminate against any employee, or applicant for employment in violation of Federal Executive Order 11246 and State Executive Order No. 75.5 and A.R.S. Section 31-1461 et. seq.
2. CONTRACT MODIFICATION. No modification of this contract shall bind Buyer unless a formal Contract Amendment is executed between Buyer and Vendor.
3. SHIPMENT UNDER RESERVATION PROHIBITED. Vendor is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of the goods.
4. PACKING AND SHIPPING. Vendor shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and ICC regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.
5. NO REPLACEMENT OF DEFECTIVE TENDER. Every tender of goods must fully comply with all provisions of this contract as to time of delivery, quantity, assortment, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Vendor shall not have the right to substitute a conforming tender.
6. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH. Each installment or lot of this contract is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole contract and constitutes a breach of the contract as a whole.
7. GRATUITIES. The Buyer may, by written notice to the Vendor, cancel this Contract if it is found by Buyer that gratuities, in form of entertainment, gifts or otherwise were offered or given by the Vendor or any agent or representative of the Vendor, to any officer or employee of the City of Chandler with a view toward securing an order or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such order. In the event this Contract is canceled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Vendor the amount of the gratuity.
8. WARRANTIES. Vendor warrants that all goods delivered under this contract will conform to the requirements of this contract (including all applicable descriptions, specifications, drawings, and samples), and will be free from defects in material and workmanship and will be free from defects in design and fit for the intended purposes. Any inspection or acceptance of the goods by Buyer shall not alter or affect the obligations of vendor or the right of Buyer under the foregoing warranties.
9. ASSIGNMENT - DELEGATION. No right or interest in this contract shall be assigned by Vendor without the written permission of Buyer, and no delegation of any duty of Vendor shall be made without permission of Buyer. Any attempted assignment of delegation shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
10. ASSIGNMENT - CLAIMS. Vendor and the City of Chandler recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact borne by the City of Chandler. Therefore, Vendor hereby assigns to the City of Chandler any and all claims for such overcharges.
11. ADVERTISING. Vendor shall not advertise or publish, without Buyer's prior consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with proper requests for information as provided by appropriate statutes.
12. DELIVERY ORDERS. The City of Chandler shall issue a Purchase Order for the goods or services covered by this contract. All such Purchase Orders will reference the contract number as indicated on the solicitation.
13. TITLE AND RISK OF LOSS. The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives the goods at the point of delivery.
14. INSPECTION. All goods are subject to final inspection and acceptance by Buyer. Material failing to meet the requirements of this Contract will be held at Vendor's risk and may be returned to the Vendor. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of the Vendor.

15. LIENS. All goods delivered and labor performed under this Contract shall be free of all liens, and if Buyer requests, a formal release of all liens will be delivered to Buyer.
16. REMEDIES AND APPLICABLE LAW. This Contract shall be governed by the law of the State of Arizona, and Buyer and Vendor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this contract or in statutes pertaining specifically to the State. This contract shall be governed by the law of the State of Arizona, and suits pertaining to this Contract may be brought only in the courts of the State of Arizona.
17. CONFLICT OF INTEREST. Pursuant to A.R.S. Section 38-511, a municipality may, within three (3) years after its execution, cancel any contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the municipality is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.
18. FORCE MAJEURE. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts, injunctions-intervention-acts, or failures or refusal to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as results or effects of the force majeure prevent the party from resuming performance in accordance with this Agreement. Force majeure shall not include the following occurrences:
- A. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
 - B. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this Force Majeure term and condition. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
 - (1) If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed Certified-Return Receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this contract.
19. RIGHT TO ASSURANCE. Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
20. INTERPRETATION - PAROLE EVIDENCE. This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to objection. Whenever a term defined by the Uniform Commercial Code is used in this contract, the definition contained in the Code is to control.
21. COMPLIANCE OF LAWS. The final contract must be in compliance with all Federal, Arizona and City of Chandler laws and regulations and is subject to termination by the City, termination for non-availability of funding and for prepayment, without penalty. In addition, all agreements are subject to review by the City Attorney.
22. CHOICE OF LAW. The parties hereby agree that Agreement was negotiated, made and entered into in Arizona and under the laws of Arizona.
23. DISPUTE RESOLUTION. All claims, disputes and other matters in question between Owner and Contractor arising out of, or relating to the Contract Documents, or the breach thereof will be decided by binding, unappealable arbitration, if the claim for compensation, costs and expenses or damages is equal or less than \$50,000.

Nothing herein contained shall be so construed as to preclude the Contractor from commencing a legal action in relation to claims in excess of \$50,000, but the Contractor's sole legal remedy in relation to claims of \$50,000 or less shall be binding, unappealable arbitration as prescribed.

All arbitration of claims shall be conducted in Chandler, Arizona, in accordance with the Uniform Rules of Procedure for Arbitration adopted by the Arizona Supreme Court (Uniform Rules), except for any rules therein allowing or concerning appeal.

Where necessary to allow arbitration to proceed, the Owner and Contractor shall execute an Agreement of Reference consistent with the provisions of this paragraph and the Uniform Rules as modified by this paragraph.

If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

Should either party to the Agreement bring an action to enforce any provision of the Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in connection therewith.

Except as otherwise specifically provided in the Contract Documents, no action or failure to act by the Owner, Engineer or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder.

24. **QUANTITIES.** As shown in the bid form are estimates only based upon available information. The City reserves the right to adjust the quantities as necessary to meet its need.
25. **FUNDS APPROPRIATION.** If funds are not appropriated to continue this agreement and for the payment of charges hereunder, the City may terminate this agreement at the end of the fiscal period. The City agrees to give written notice of termination to the contractor at least thirty (30) days prior to the end of its current fiscal period and will pay to the contractor all charges incurred through the end of such period.
26. **BID/PROPOSAL AND/OR PERFORMANCE BONDS SHALL BE REQUIRED AS SPECIFIED.** Vendors failing to supply a bond as specified in the solicitation will be considered non-responsive and their offer will not be considered. Unless otherwise specified in the solicitation, performance bonds can be requested from successful bidders at the sole discretion of City of Chandler. Vendor failing to supply performance bond as required will forfeit his offer, bond, if any, and the award. Performance bonds shall be furnished within fifteen (15) calendar days of the notification of award; date of U.S. Postmark will be accepted as date of delivery of performance bond.
27. **PATENTS.** Seller agrees to defend Buyer at seller's own expense, in all suits, actions or proceedings in which buyer is made a defendant for actual or alleged infringement of any United States of America or foreign letters patent resulting from buyer's use of the goods purchased as a result of this solicitation. Seller further agrees to pay and discharge any and all judgments or decrees, which may be rendered in any such suit, action or proceedings against Buyer.

Seller agrees to indemnify and hold harmless the Buyer from any and all license, royalty and proprietary fees or costs, including legal costs, which may arise out of Buyer's purchase and use of goods supplied by the seller. Vendor will indemnify Buyer against all claims for damages to persons or property resulting from defects in materials or workmanship. It is expressly agreed by seller that these covenants are irrevocable and perpetual.
28. **BID PRICE.** Price offered shall be made F.O.B. Chandler, delivered to the designated delivery points within the metropolitan area. Items will be delivered at the location designated by the City.
29. **NO-COLLUSION.** The Vendor will be required to complete, notarize and submit as part of this solicitation package the attached "No-Collusion Affidavit". Failure of the Vendor to submit a properly executed affidavit may be grounds for rejection of the offer.
30. **CONTRACT AWARD.** If contract award is over \$30,000.00, it will be at the discretion of the City Council as to whether or not to make award, to whom, or to reject offers.
31. **STANDARDS.** The specifications attached herein this solicitation shall be considered minimum acceptable to City standards. Offers for lower standard materials, products or services will be justification for rejection of offer(s) by the City.
32. **INFORMATION ON ITEMS.** Supplies and materials offered shall be of current design and meet specifications. Offeror must identify the manufacturer of each product being offered. Offeror should supply all information necessary for the City to determine (a) whether the product offered meets the requirements of the specifications, and (b) exactly what the offeror proposes to furnish. The offeror must certify that the material offered meets all technical specifications of the solicitation documents. Offeror may be requested to furnish samples of items proposed at no cost to the City. The City reserves the right to call for samples from any Offeror to assist in the evaluation. The City shall be the sole judge of whether the samples submitted meet the specifications.
33. **CLARIFICATION OF REQUIREMENTS.** It is the intent and purpose of the City of Chandler that this request permits competitive bidding. It shall be the Offeror's responsibility to advise the City Purchasing Office if any language, requirements, etc., or any combinations thereof, inadvertently restricts or limits competition, and/or are not clearly stated and easily

understood. Such notification must be submitted in writing and must be received by the City Purchasing Office not later than ten (10) days prior to the solicitation opening date. A review of such notifications will be made.

34. **OBLIGATION OF OFFEROR.** At the time of the opening of submittals, each Offeror will be presumed to have studied in detail the work scope and work sites and to have read and to be thoroughly familiar with the specifications and contract documents, including all amendments(s). The failure or omission of any Offeror to examine form, instrument, document or site shall in no way relieve any Offeror of any obligations in respect to their offer.
35. **QUALIFICATIONS OF OFFERORS.** The City may make such investigations as it deems necessary to determine the ability of any Offerors to perform the work, and the Offeror shall furnish to the City all such information and data for this solicitation as the City may request. The City reserves the right to reject any offers if the evidence submitted by, or investigation of, such Offeror fails to satisfy the City that such Offeror is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional offers will not be accepted.
36. **BID MODIFICATION.** The City shall not permit any bid to be modified once the sealed bid has been publicly opened by the City at the bid opening. Modifications proposed after the bid opening to make a product conform to the specifications will not be considered.
37. **PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL.** All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's need. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.
38. **COST OF OFFER PREPARATION.** The City will not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.
39. **SILENCE OF SPECIFICATIONS.** The apparent silence of these specifications and any supplemental specifications as to any details or the omission from it of any detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All workmanship shall be made on the basis of this statement.
40. **LICENSES.** Contractor shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.
41. **INDEMNIFICATION.** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City of Chandler, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by any acts, errors, mistakes, omissions, work or services in the performance of this contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services for which the Contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

42. **VENDOR RESPONSIBILITY.** If, in the judgment of the City, the offer or the offeror is not responsible, it shall be considered sufficient grounds for rejection of the entire offer.

Any offeror shall furnish upon request, two (2) copies of the Offeror's most recent financial statement and/or other evidence of his qualifications as may be requested by the City. If an offeror fails to furnish in a timely manner the information requested, it shall be considered sufficient grounds for rejection of such offeror's entire offer.

43. **CLARIFICATIONS.** The City reserves the right to obtain offeror clarifications where necessary to arrive at full and complete understanding of offeror's product, service, and/or solicitation response.
44. **PROTESTS.** A protest must be in writing and filed with the Purchasing Office. A protest of a solicitation must be received before the solicitation opening date. A protest of a proposed award must be filed before the City Council Meeting that the recommendation will be voted upon. If the award is less than \$30,000, City Council approval is not needed and protests must be submitted with ten (10) days after the protestor knows or should have known the basis of the protest. The City shall determine whether to issue a written response or hold an administrative hearing. The City shall also determine whether to continue the council agenda item to a future City Council Meeting, as applicable.

A protest must include:

- A. The name, address and telephone number of the protestor;
- B. The signature of the protestor or it's representative;
- C. Identifications of the project and the solicitation or contract number;
- D. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- E. The form of relief requested.

- 45. APPROVALS. All work shall be done to the satisfaction of and be approved by the Purchasing and Material Manager, or his representative. All work, except final acceptance, shall be considered accepted by the City if the Contractor is not otherwise advised in writing within sixty (60) days after the last item is submitted.
- 46. LAWS AND REGULATIONS. The vendor's attention is directed to the fact that all applicable State laws, municipal ordinances, and the rules and regulations of all having jurisdiction over services performed for the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.
- 47. NON-EXCLUSIVENESS OF CONTRACT. It is not agreed that the Contractor shall have the exclusive right, during the term of this contract and all renewals thereof, to provide the product(s) and/or services as described herein.
- 48. SIGNATURE. Bidders/Proposers are required to sign offer in the Offer Section of the solicitations. Bidders/Proposers failing to sign offer will be considered non-responsive and their offer will not be considered.
- 49. PUBLIC RECORD. All offers submitted in response to this solicitation and all offer evaluation related records shall become property of the City and shall become a matter of public record for review, subsequent to publication of the proposed award by the City Clerk's Office of the agenda for the City Council Meeting or award by the appropriate approving authority.

Request for nondisclosure of data such as trade secrets and other proprietary data, must be made known to the City in proposals submitted.

- A) The City will NOT insure confidentiality of any portion of the solicitation documents that are submitted in the event that a public record request is made.
 - B) The City will provide 48 hours notice before releasing materials identified by the offeror/bidder as confidential or proprietary in order that the offeror/bidder can obtain a court order blocking the release of the information.
 - C) The City will protect the confidential and proprietary documents it has in its possession and will not release this information to unauthorized personnel unless ordered to do so by the appropriate authority.
- 50. CHANGE ORDERS. Change orders may be written to the contract for addition or deletion of services or equipment. Change orders will be processed in accordance with City change order procedures.
- 51. CONDUCT. Contractor's employees, officers and subcontractors shall not identify themselves as being employees of the City of Chandler. Employees shall conduct themselves in such a manner as to avoid embarrassment to the City of Chandler, and shall be courteous to the public.
- 52. DRIVER'S LICENSE. Employees driving the Contractor's vehicles shall at all times possess and carry a license issued by the State of Arizona to operate the appropriate vehicle(s) and/or equipment.
- 53. ORDERING INSTRUCTIONS. Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a purchase document signed by an authorized agent. The purchase order will specify the items ordered, delivery instructions and any other pertinent information required. All City and vendor documents must reference the resultant contract number.
- 54. CONTRACT TERMINATION. This contract may be discontinued without default by either party by providing a written sixty (60) day notice of termination to the other party.
- 55. COOPERATIVE USE OF CONTRACT. In addition to the City of Chandler and with approval of the contracted vendor, this contract may be extended for use by other municipalities, school districts and government agencies of the State. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.
- 56. AWARD OF CONTRACT CONTINGENT ON SALE AND DELIVERY OF BONDS. As the sole source for payment of the amounts due under the contract, the City will sell bonds and deposit the bond funds in a special fund to be used thereafter to pay progress payments and incidental expenses. To guard against the possibility that the City will be unable to sell or deliver the bonds for any reason, the award of the contract and the performance by the City of its obligations under the contract is conditioned upon the actual sale and delivery of the City's bonds in an amount which is sufficient to produce the amount required to meet the payments due under the contract. The City reserves the right to rescind the award of the contract and terminate the contract, if executed, without incurring expenses or liability for such termination or rescission if it is unable to provide funding through the sale of its bonds for any reason. Notwithstanding an award of the contract, the contractor or vendor should not perform any work or incur any expense pursuant to the contract until such time as the contractor or vendor

has received notice from the City that bond funds are held by the City in an amount sufficient to pay the amounts due under the contract.

57. IMMIGRATION REFORM AND CONTROL ACT. The contractor shall comply with the Immigration Reform and Control Act of 1986 (IRCA). Contractor understands and acknowledges the applicability of the IRCA to contractor. Contractor agrees to comply with the IRCA in performance of any resultant contract and to permit City inspection of their personnel records to verify such compliance.

(revised 5/14/02)

**SPECIAL TERMS AND CONDITIONS
DRY CELL BATTERIES
CONTRACT NO. WH3-6135-1949**

1. Intent

It is the intent of the Cities of Chandler and Mesa to enter into a cooperative contract for the purchase of Dry Cell Batteries.

2. Definition

The term "Contractor" shall hereinafter be defined and used interchangeable with the term "Bidder". The term "Owner" shall hereinafter be defined and used interchangeable with the term "City of Chandler".

3. PRE-BID CONFERENCE

The City of Chandler will hold a pre-bid conference on September 18, 2002 at 9:00 a.m. in the Purchasing & Material Division Conference Room, 249 East Chicago Street, Chandler, AZ. The purpose of the conference is to clarify, ask questions and provide information as required, which may be important in the bid process.

4. Bids and Contracts

Bidders are cautioned to verify their bids before submission, as amendments to or withdrawal of bids submitted after time specified for opening of bids will not be considered. All bids must be submitted on the enclosed bid forms where such forms are provided in the invitation. Bids accepted by the City in writing constitute a legally binding contract.

5. Estimated Usage

The quantities shown are estimates only and the City reserves the right to increase or decrease amounts as circumstances may require.

6. Delivery

Prices bid shall be F.O.B. destination, freight prepaid, delivered. The seller shall retain title and control of goods until delivered and the contract coverage has been completed. Damage to merchandise due to shipment shall be the responsibility of the seller and/or shipper.

Delivery shall be made as soon as possible, but should not be more than seven calendar days after receipt of order. Bidders must indicate the number of calendar days required for delivery on the Bidder's Offer. Preference may be given to vendors with a local warehouse.

7. Samples

Samples of items, when requested, must be submitted within a reasonable period of time. Unless otherwise specified by the City of Chandler Purchasing Office, samples will be furnished, at no expense

to the City. They must be identified as to supplier, manufacturer, part number, model number, type, grade, applicable stock number, etc. If not destroyed by testing, samples will be returned at vendor's request and expense. If no instructions are received for their return, samples will be discarded thirty (30) days after award date.

8. Addendums

Addendums issued during the time of bidding shall be attached to and made a part of the contract documents.

9. Descriptive Literature

All bidders must submit complete manufacturers' descriptive literature regarding the product they propose to furnish. Literature shall be sufficient in detail in order to allow full and fair evaluation of the bid submitted. Failure to include this information may result in the bid being rejected.

10. Warranty

Manufacturer to state warranty coverage and present policy where called for on the price sheets.

11. Taxes

All prices bid shall not include applicable State and local taxes.

12. Brand Names

Any use of brand names in this solicitation is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. Any offer which proposes equal quality, design or performance will be considered if the product offered is identified in the bid, including technical information, and is determined by the City to be equal in all material respects to the brand name referenced in the solicitation.

13. New Equipment

All equipment supplied pursuant to this specification shall be new, unused, current production models equipped as described in the manufacturer's published literature and specification sheets.

Any variations between the equipment bid and the literature and specification sheets submitted shall be noted by the bidder on the submittals. The equipment specified herein shall be equipped with those items normally supplied in the stream of commerce. Any item or items not specifically mentioned shall not be interpreted as not requested. Specifications are intended to set minimum levels of quality and/or suitability.

14. Multiple Awards

To provide adequate contract coverage for the City, multiple awards may be made.

15. Length of Contract

The contract shall be for a period of three (3) years from date of Notice to Proceed. The City of Chandler has the option to renew the contract for two (2) additional one (1) year periods if mutually agreeable. If the contract is renewed, the total length of the contract shall not exceed five (5) years from the original date of award of contract. Any of the contract periods may be extended by thirty-one (31) days.

16. Notice of Contract

The issuance of a formal contract or a purchase order to the successful Bidder will be considered sufficient notice of acceptance of contract. Said contract shall bind Bidder on his part to furnish and deliver at the prices and in accordance with the conditions of his bid.

In lieu of a formal contract, the following notation shall be made on the Purchase Order:

This Purchase Order, together with Bidder's offer, Invitation for Sealed Bid, amendments if any, and bid specifications shall constitute the contract documents, and each of these is incorporated into the contract by reference, together with all applicable State laws.

Non-performance of contract will give sufficient cause for the owner to cancel the contract. Non-performance shall be construed to mean failure of Bidder to deliver in the time specified, failure to provide the quality of product specified, or price changes. Cancellation of contract for any reason may result in removal of the successful Bidder's name from the vendor list for future solicitations for one (1) year.

17. Ordering Instructions

Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a purchase document signed by an authorized agent. The purchase order will specify the items ordered, delivery instructions and any other pertinent information required. All City and vendor documents must reference the resultant contract number.

18. Terms and Payment

Payment under the contract will be made in the manner provided by the law. Invoices shall be prepared and submitted in accordance with the instructions provided on the purchase order. Invoices shall contain the following information:

Purchase order number, item numbers, model numbers, and/or serial numbers, description of supplies and/or services, sizes, quantities, unit prices and extended totals and applicable sales/use tax. The City is not subject to excise tax.

19. Safety Standards

All items supplied on this contract must comply with the current applicable Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.

20. Contract Administration

The authorized representatives of the City Purchasing Office and the Warehouse shall jointly administer this contract. All questions regarding this contract shall be referred to the Purchasing Office at (480) 782-2400 for resolution.

21. Claims

Payment of any claim shall not preclude the owner from making claim for adjustment on any item found not to have been in accordance with general condition and specifications.

22. Compliance

Bidder must state the manufacturer of each product bid with identifying model numbers, descriptions, etc. The Bidder shall state if equipment being bid complies with the bid specification. If the equipment

being bid varies in any part from the specifications, the Bidder will list specifically the deviations. Information specified herein is for vendor information purposes only and is not meant to be restrictive. Alternative bids will be considered.

23. Assignment

The successful Bidder shall not assign, transfer, convey, sublet or otherwise dispose of the contract or his right title, or interest therein, or his power to execute such contract, to any other person, company or corporation without prior consent of the Owner.

24. Contract Applicability

Bidder must substantially conform to the terms, conditions, specifications and other requirements found within the text of this specific Invitation for Bids. All previous agreements, contracts, or other documents, which have been executed between the bidder and the City of Chandler are not applicable to this Invitation for Bids or any resultant contract.

25. Condition of Award

By submitting a bid, the vendor understands and agrees to promote and offer to the City of Chandler only those products, equipment and/or services as stated in and allowed for under resultant contract(s). Violation of this condition is grounds for terminating the contract(s).

26. Evaluation

The award shall be made to the lowest responsive, responsible bidder determined to be in the best Interest of the City.

27. Cancellation

The City reserves the right to cancel the whole or any part of this contract due to failure of the contractor to carry out any term, promise, or condition of the contract. The City will issue a written ten (10) day notice of default to the contractor for acting or failing to act as in any of the following:

In the opinion of the City, the contractor provides material that does not meet the requirements of the contract;

In the opinion of the City, the contractor fails to perform adequately the services required in the contract;

In the opinion of the City, the contractor attempts to impose on the City materials, products, service, or workmanship, which is of an unacceptable quality;

The contractor fails to complete the required work or furnish the required materials within the time stipulated in the contract;

In the opinion of the City, the contractor fails to make progress in the performance of the requirements of the contract and/or gives the City a positive indication that the contractor will not or can not perform to the requirements of the contract.

The City may resort to any single or combination of the following remedies:

- a. Cancel any contract for any of the above stated reasons;
- b. Reserve all rights or claims to damage for breach of any covenants of the contract;

- c. Perform any test or analysis on materials as to whether they conform in all respects to the specifications of the contract. If the results indicate non-compliance with the specifications, any actual expense of testing will be borne by the contractor;
- d. In case of default, the City reserves the right to purchase in the open market, or to complete the required work, at the expense of the contractor. The City may recover any actual excess costs by:
 - (1) Deduction from an unpaid balance;
 - (2) Collection against the bid and/or performance bond, or;
 - (3) Any combination of the aforementioned remedies or any other remedies as provided by law.

**BIDDER'S OFFER
 DRY CELL BATTERIES
 CONTRACT NO. WH3-6135-1949**

NAME OF FIRM Sunbelt Battery

ADDRESS OF FIRM 602 N. Hayden Rd.
Scottsdale, AZ 85257-4701

CONTACT NAME AND TITLE F. W. James, VP

TELEPHONE NUMBER 480-968-8068

FAX NUMBER 480-968-9838

Arizona Sales/Use Tax No. 07-579823N

EIN or Social Security No. 94-3307070

Delivery: 7 calendar days ARO

Applicable Sales Tax: 7.7%

Delivery: 7 calendar days ARO

Payment Terms: 5%21 NET 30

Term of Contract: April 14, 2002 through November 30, 2005

IV. BID SCHEDULE

LINE NO.	DESCRIPTION	U/M	UNIT PRICE
1	Battery, Dry Cell, D, Alkaline Industrial, Neda 13AC Flashlight type, Size D Eveready EN-95 or acceptable alternate. Mfg./Brand: <u>Eveready Energize</u> _____ r Catalog No: <u>EN 95</u> _____ Units/case: <u>12/72</u> _____	ea	\$0.545
2	Battery, Dry Cell, D, Zinc, Neda 13CD Flashlight type, Size D Eveready EV-150 or acceptable alternate. Mfg./Brand: <u>Eveready</u> _____ Catalog No: <u>EV-150</u> _____ Units/case: <u>24/192</u> _____	ea	\$0.205
3	Battery, Dry Cell, Lantern, 6V Lantern, spring top HD C-2 Eveready EV-190 or acceptable alternate. Mfg./Brand: <u>Eveready</u> _____ Catalog No: <u>EN190</u> _____ Units/case: <u>12</u> _____	ea	\$1.165

4	Battery, Dry Cell, Aa, Alkaline Industrial, Neda 15AC Multipurpose, Size AA Eveready EN-91 or acceptable alternate. Mfg./Brand: <u>Eveready Energize</u> _____ Catalog No: <u>EN91</u> _____ Units/case: <u>24/144</u> _____	ea	0.273
5	Battery, Dry Cell, Alkaline Industrial, Neda 24AC General purpose type, Size AAA, 1.5V Eveready EN-92 or acceptable alternate. Mfg./Brand: <u>Eveready Energize</u> _____ Catalog No: <u>EN92</u> _____ Units/case: <u>24/144</u> _____	ea	\$0.278
6	Battery, Dry Cell, 9Volt, Alkaline Industrial General purpose, Eveready EN-22 or acceptable alternate. Mfg./Brand: <u>Eveready Energize</u> _____ Catalog No: <u>EN22</u> _____ Units/case: <u>12/72</u> _____	ea	\$0.954
7	Battery, Dry Cell, 12Volt, Alkaline Industrial Lantern 12 volt w/screw terminals Eveready 732 or acceptable alternate. Mfg./Brand: <u>Eveready</u> _____ Catalog No: <u>732</u> _____ Units/case: <u>6</u> _____		\$7.54
8	Battery, Dry Cell, C, Alkaline Industrial, Neda 14AC General purpose type, Size C Eveready EN-93 or acceptable alternate. Mfg./Brand: <u>Eveready Energize</u> _____ Catalog No: <u>EN 93</u> _____ Units/case: <u>12/72</u> _____	ea	\$0.46
9	Flashlight Bulb PR2BP Mfg./Brand: <u>Eveready Energize</u> _____ Catalog No: <u>PR2BP-2 (2 pack)</u> _____ Units/case: <u>10</u> _____	ea	\$.355